

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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TIMOTHY STEWART, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

CITIZEN ADVOCATES, INC. doing business as  
NORTH STAR FAMILY OF SERVICES,

Defendant.

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Civil Action No. 8:16-cv-1512 (DNH/DJS)

**CLASS AND COLLECTIVE ACTION  
COMPLAINT FOR DAMAGES,  
RESTITUTION AND INJUNCTIVE  
RELIEF**

**JURY TRIAL DEMAND**

Plaintiff, TIMOTHY STEWART, individually and on behalf of all others similarly situated, by his attorneys, The Law Office of Christopher Q. Davis, PLLC, alleges, upon personal knowledge and upon information and belief as to other matters, as follows:

**NATURE OF ACTION**

1. This is a collective and class action brought by Lead and Putative Class Representative Plaintiff Timothy Stewart (the “Representative Plaintiff” or “Lead Plaintiff”) and all putative plaintiffs (collectively, “Plaintiffs”), on their own behalf and on behalf of the proposed collective classes and classes identified below. Plaintiff and the Putative Class and Collective Class members were or are employed by Defendant Citizen Advocates, Inc., doing business as North Star Family of Services (“CAI” or “Defendant”), as non-exempt hourly “supervisors,” case managers and program managers and were denied overtime premium compensation by requiring these employees to work “off-the-clock” during their unpaid half-hour meal breaks, as well as before and after they clocked out for their shifts, and failing to

properly calculate their regular rate of pay. Defendant also failed to provide Plaintiffs and the Putative Class with accurate wage statements in violation of New York Labor Law (“NYLL”) §195(3). Finally, Defendant also failed to provide Plaintiffs who no longer work for Defendant, and a separate class of former employees, credit due for accumulated paid time off, accrued but not yet used by their termination dates, under NYLL. The Putative Class and Collective Class of employees are similarly situated to the Lead Plaintiff under Federal Rule of Civil Procedure 23 and the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), and have suffered the same violations pursuant to Defendant’s common policies and practices.

2. The Collective Class is made of all persons who are or have been employed by Defendant as supervisors, case managers and program managers assigned to Defendant’s facilities located in Saranac Lake and Malone at any time within the three years prior to this action’s filing date through the date of the final disposition of this action (the “Collective Class Period”) and who were subject to Defendant’s policy of failing to pay overtime premiums for all hours worked over 40 in a given workweek.

3. The Overtime Class is made up of all persons who are or have been employed by Defendant as supervisors, case managers and program managers assigned to Defendant’s facilities located in Saranac Lake and Malone within the period of six years prior to the filing date of this Complaint (the “Class Period”) and who were subject to Defendants’ unlawful practice of failing to pay Plaintiffs overtime premiums for all hours worked over 40 in a given workweek, and Defendants’ unlawful practice of failing to provide Plaintiffs with accurate wage statements reflecting all hours, including overtime hours worked.

4. The Paid Time Off (“PTO”) Class is made up of all persons who have been employed by Defendant as supervisors, case managers and program managers assigned to

Defendant's facilities located in Saranac Lake and Malone within the Class Period and who were not paid accrued but not used credit due for paid time off at time of termination.

5. Plaintiff seeks relief for the Classes pursuant to the applicable provisions of the NYLL and Collective Class under the FLSA, to remedy the Defendants' failure to pay all wages due, in addition to injunctive relief.

### **PARTIES**

6. Individual and Representative Plaintiff Timothy Stewart was a CAI program manager, presently and at all relevant times residing in Tupper Lake, Franklin County, New York. He began his employment with Defendant in 1988 as a "supervisor," and was soon after elevated to a case manager. He has held the title of program manager since the early 1990's. Plaintiff Stewart left CAI on March 25, 2016.

7. Defendant Citizen Advocates, Inc. doing business as North Star Family of Services is a New York not-for-profit corporation with its principle places of business at 209 Park Street, P.O. Box 608, Malone, New York 12953, located within this judicial district.

8. At all relevant times, the Defendant CAI has met the definition of Plaintiffs' "employer" under Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL §190(3).

9. Upon information and belief, Defendant maintains control, oversight, and direction over its operations and employment practices.

10. At all times hereinafter mentioned, Defendant employed employees, including Plaintiffs, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials that have moved in or are produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), and (j).

11. Lead Plaintiff is informed and believes and on that basis alleges that Defendant's gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

**JURISDICTION & VENUE**

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

13. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 207 *et seq.*

14. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

15. Venue is proper in the United States District Court, Northern District of New York, pursuant to 28 U.S.C. § 1391, because the wage violations which give rise to Plaintiffs' claims occurred in this District, and because Defendant resides in this District.

16. This Court has personal jurisdiction over Defendant because it resides in and routinely transact business in the Northern District of New York.

**WAGE AND HOUR COLLECTIVE CLASS  
AND CLASS ACTION FACTUAL ALLEGATIONS**

17. CAI provides vocational training services to people with disabilities through its operations in two "Work Centers," the North Franklin Work Center, located in Malone, New York and the South Franklin Work Center, located in Saranac Lake, New York.

18. CAI provided vocational training over the years to a population ranging between 120 and 300 disabled people, all residing in New York state.

19. CAI utilizes full time employees to provide vocational training in five separate vocational settings and part-time temporary laborers.

20. Defendant has facilities in the North Franklin Work Center, located at 209 Park Street, and Creighton Road, Malone, New York 12953, and the South Franklin Work Center, located at 53 Edgewood Road, 70 Edgewood Road, and 33 Petrova Ave, Saranac Lake, New York 12953 (collectively referred to as the “Malone and Saranac Lake Facilities”).

21. At the Saranac Lake Facilities, the workers provide behavioral health services for the disabled through the five vocational settings, organized as follows: at 33 Petrova Ave., there was custodial, a production room (handles mass mailings), horticulture and food service. The 53 Edgewood Road facility provides a Redemption Center for deposit bottles where the clients work sorting bottles and processing. The facility at 70 Edgewood is a mental health and substance abuse clinic.

22. At the Malone facility, the same five vocational settings have been offered although the horticulture has closed and been replaced by Adirondack wood furnishings.

23. Supervisors, case managers and program managers assigned to the Malone and Saranac Lake Facilities are required to abide by the terms and conditions of CAI’s Personnel Policy Manual, which is applicable to all employees throughout the company.

24. Steve Lockwood, CAI’s Director of Vocational Programming, and before him Scott Miller, oversee the business operations at the Malone and Saranac Lake Facilities. Upon information and belief, Mr. Lockwood visits the Malone and Saranac Lake Facilities on a regular weekly basis.

25. Amanda Riley, CAI’s Work Center Director, reports directly to Mr. Lockwood, and shares operational responsibility over the Saranac Lake South Franklin Work Center. Upon information and belief, Ms. Riley supervises at least three program managers at the Saranac Lake

facility, who in turn oversee approximately between one and five case managers, 15 direct support staff and 20 seasonal laborers in Saranac Lake.

26. Martha Bowen, CAI's Work Center Director, reports directly to Mr. Lockwood, and shares operational responsibility over the Malone North Franklin Work Center. Upon information and belief, Ms. Bowen supervises at least three case managers, and 15-20 direct support staff in Malone.

27. Lockwood, Riley and Bowen oversee and enforce all operational policies and practices which relate to the services provided by employees in the Malone and Saranac Lake Facilities.

**Defendants' Unlawful "Off the Clock" Practice of Forcing Plaintiffs to Work During Unpaid Lunch Breaks, as well as before and after shifts**

28. In order to provide CAI customers with adequate service, Defendant requires non-exempt hourly employees to meet demanding productivity requirements each workday, forcing Plaintiffs to work in excess of 40 hours per week in order to avoid disciplinary action. As a result, Plaintiffs regularly worked "off-the-clock" through their unpaid half-hour meal breaks, as well as before and after shifts.

29. For example, Plaintiff Stewart started his work being responsible for one of the five vocational settings and the Saranac Lake facility. Over time, as employees responsible for other vocational settings left the company, the company simply dropped the extra responsibilities on Plaintiff Stewart's lap. On information and belief, all of the employees are situated such that they have more work than they can possibly complete in 40 hours per week.

30. Employees are assigned to weekly shifts that consist of 5 consecutive 8-hour days, or 40 hours a week, with a half-hour meal period, during which time the employee "clocks out." According to the CAI Personnel Policy Manual, employees may also perform overtime-

eligible labor that is pre-approved and scheduled in advance by a supervisor or manager, and are paid at one and one-half their hourly rate of pay for this time.

31. According to the CAI Personnel Policy Manual, “Program Director approval is required for any overtime.” That document also provides that “Agency employees classified as non-exempt will be paid at a rate of one and one half times their regular hourly rate for all hours worked in excess of forty (40) per week.”

32. According to the CAI Personnel Policy Manual, “An employee who is scheduled to work on an Agency recognized holiday will receive double pay for the hours worked on the holiday.” CAI did not pay double pay for plaintiffs who worked on holidays.

33. Alternatively, CAI offered “Compensatory Time,” essentially paid time off that must be taken within the same pay period in which the employee works more than forty (40) hours per week.

34. Defendant CAI, throughout the Class Period, made available to employees a time-keeping system, where an employee could use his or her fingerprint and a numeric code in order to check in and check out. Employees would check in at the start of the shift, check out for a half hour lunch “break,” check back in after lunch, and check out at the end of the day.

35. Defendant CAI violated Plaintiffs’ lunch breaks routinely. Employees would have lunch on-site at the staff lounge. While on “lunch break” the employees were often called in for behavioral problems, or they were otherwise on call to do things when necessary to serve the client population.

36. Defendant CAI also required its employees to do things before and after their shift. For example, Plaintiff Stewart was required to arrive between an hour and an hour and a half early to meet and unload a truck bringing supplies, during which time the building was

locked, and he could not reach the clock. He would also be required to work late, for example, to supervise the janitorial staff, also comprised of clients of the facility. On information and belief, this happened throughout the company. In fact, those employees who worked in the greenhouse and garden had to work even more hours (approximately sixty hours per week) during peak agricultural seasons, for which they were offered “comp time,” instead of properly compensated overtime. Such Compensatory Time off was awarded in different pay periods, contrary to the company’s policy.

37. Defendant CAI, pursuant to commonly enforced policies and practices, failed to provide Plaintiffs with any means or method, let alone any procedure, for recording actual hours worked during unpaid lunch breaks, and before and after shifts. This conflicts with CAI’s own mandate that employees must record all hours worked, and violates the NYLL and FLSA, which require employers to maintain accurate payroll records.

38. As a result of Defendant’s failure to maintain accurate payroll records that reflect that actual amount of time that Plaintiffs worked, Defendant failed to furnish Plaintiffs and members of the Class with accurate and/or complete wage statements on each payday, that included the total hours worked each week and the full amount of wages earned during the pay period.

**Defendant Had Knowledge Of The Widespread “Off-The-Clock” Practices in the Malone and Saranac Lake Facilities**

39. Defendant’s knowledge of the pervasive and widespread nature of the off-the-clock violations alleged herein was known by supervisors at the Work Center level, in willful violations of the labor laws.

40. Plaintiff is informed and believes and on that basis alleges that management was well aware that they forced employees to work through their unpaid lunch without compensation.



Additionally, the Representative Plaintiffs complained about working through lunch, and working off the clock before and after their shifts to their supervisors on numerous occasions throughout the Class and Collective Class Time Period.

41. Defendants knowingly failed to correct their illegal over time policies, and off-the-clock violations continue to this day.

**Defendant's Unlawful Practice of Failing to Pay Former Employees Accrued Paid Time Off**

42. During the course of the Class Period, Defendant had in place a policy to provide its employees with a specific wage supplement. At first, the policy broke down the wage supplements among separate categories including vacation, holiday pay, paid sick leave, and the like.

43. According to the CAI Personnel Policy Manual, Sixth Edition, Revised 10/09, "The Agency provides annual paid time off to all regular full-time and regular part-time employees," in an amount that is based on the employee's status and length of service.

44. The Manual also specified that: "No more than one year's worth of paid time off may be carried over to the next calendar year. Any accumulated paid time off days in excess of the allowed carry-over amount will be paid out to the employee."

45. Finally, the Manual provides that "At the time of separation, an employee will receive payment for any unused accrued paid time off."

46. CAI failed to pay out unused accrued paid time off, as specified in the manual.

47. On March 28, 2012, Dean Johnston, Chief Operating Officer and Scott Henderson, Human Resources Director issued a memorandum changing these policies only to the extent that CAI would discontinue the year end payout of PTO time accrued in excess of the

yearly carry-over limit. This did not impact the amount of PTO time that plaintiffs accrued, in particular allowing a carryover of one year's balance to the next year.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

48. Plaintiffs incorporate by reference all of the factual allegations made in the preceding paragraphs.

49. Defendant employed Plaintiffs during the Collective Class Period.

50. Defendant classified Plaintiffs and Members of the Collective Class as nonexempt for the purposes of the FLSA, paying them an hourly wage rather than an annual salary.

51. Upon information and belief, there are approximately more than 100 current and former employees who are similarly situated to Lead Plaintiff and who were denied overtime compensation.

52. The Lead Plaintiff represents other employees, and is acting on behalf of Defendant's current and former employee's interests as well as his own interest in bringing this action.

53. Defendant unlawfully required Plaintiffs and all individuals employed by CAI to work through their unpaid half-hour meal breaks, and to work before their shifts and after their shifts.

54. At all times during the Collective Class Period, Defendants, as a matter of common policy and/or practice, have not paid Plaintiffs lawful overtime premiums for all hours worked in excess of 40 hours in a work week.

55. Plaintiffs seek to proceed as a collective action, pursuant to 29 U.S.C. §216(b), on behalf of themselves and the following class of persons:

**Collective Class:** All individuals employed by Defendant as supervisors, case managers, or program managers, or similar titles, in Defendant's

Malone or Saranac Lake facilities at any point during the Collective Class Period who earned but were not paid lawful FLSA overtime premiums for hours worked over 40 in a work week during the Collective Class Period based on the practices alleged herein.

56. Specifically, Plaintiffs' Collective Class is further defined as involving (i) claims for unpaid overtime based on Defendants' company-wide policy of miscalculating the "regular rate of pay" for the purposes of determining overtime pay entitlement; (ii) claims for unpaid overtime compensation for Defendant's practice of forcing Plaintiffs to work "off the clock" and without compensation during unpaid meal breaks; and (iii) claims for unpaid overtime compensation for Defendant's practice of forcing Plaintiffs to work "off the clock" and without compensation before and after their regular shift times.

57. As such, the Lead Plaintiff and the Collective Class suffered damages for unpaid earned overtime wages under the FLSA in each of the weeks they worked during the Collective Class Period.

58. Defendant was aware or should have been aware that the law required it to pay non-exempt employees, including Plaintiffs and the Collective Class, an overtime premium of 1 and ½ times their regular rate of pay for all work-hours Defendant suffered or permitted them to work in excess of 40 per workweek.

59. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith, and has caused significant damages to Plaintiffs and the Collective Class.

60. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs and the Collective Class, and as such, notice should be sent to the Collective Class.

61. There are numerous similarly situated current and former employees of Defendant who were subject to the aforementioned policies in violation of the FLSA who would benefit

from the issuance of a Court supervised notice of the present lawsuit and the opportunity to join in the present lawsuit.

62. Those similarly situated employees are known to the Defendant and are readily identifiable through Defendant's records.

**FEDERAL RULE OF CIVIL PROCEDURE**  
**RULE 23 NEW YORK CLASS ALLEGATIONS**

63. Plaintiff incorporates by reference all of the factual allegations made in the preceding paragraphs.

64. Plaintiff seeks to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following defined classes:

**Proposed Overtime Class:** All individuals employed by Defendant as supervisors, case managers, program managers, or similar titles, in Defendant's Malone and Saranac Lake Facilities at any point during the Class Period who earned but were not paid lawful NYLL overtime premiums for hours worked over 40 in workweek during the Class Period based on the practices alleged herein.

**Proposed PTO Class:** All individuals formerly employed by Defendant as supervisors, case managers, program managers, or similar titles, in Defendant's Malone and Saranac Lake Facilities at any point during the Class Period who earned but were not paid lawful NYLL wage supplements during the Class Period based on the practices alleged herein.

65. The Proposed Overtime Class and Proposed PTO Class are herein, collectively, the Proposed Classes.

66. Specifically, Plaintiff's Proposed Overtime Class is further defined as involving: (i) claims for unpaid overtime based on Defendants' company-wide policy of miscalculating the "regular rate of pay" for the purposes of determining overtime pay entitlement; (ii) claims for unpaid overtime for Defendant CAI's practice of forcing Plaintiffs to work "off the clock" and without compensation during unpaid meal breaks; (ii) claims for unpaid overtime for Defendant

CAI's practice of forcing Plaintiffs to work "off the clock" and without compensation before and after regular shifts; (iii) claims for holiday pay at double wages; and (iv) claims for wage statement violations for Defendants' failure to provide Plaintiffs' with accurate wage statements on each payday that include the information required by NYLL §195(3), including the correct number of hours worked during the pay period.

67. Defendant has violated NYCRR 142-2.2 and NYLL §§ 191, 193 by failing to pay Plaintiff and the putative class at least one and one-half times their wages for all hours worked over 40 during the class period pursuant to the same illegal practices and policies alleged above.

68. Numerosity: The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the Class Period, Defendants employed over 100 people who satisfy the definition of the Proposed Classes.

69. Typicality: Plaintiffs' claims are typical of those of the Proposed Class. The Representative Plaintiff is informed and believes that, like other employees, the Class members were subjected to Defendant's policies, practices, programs, procedures, protocols and plans alleged herein concerning the failure to pay proper wages, failure to keep adequate records and failure to furnish accurate wage statements.

70. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

71. Adequacy: The Representative Plaintiff will fairly and adequately protect the interests of the Proposed Classes, and has retained counsel experienced in complex FLSA and NYLL class and collective action litigation.

72. Commonality: Common questions of law and fact exist to all members of the Proposed Class and predominate over any questions solely affecting individual members of the Proposed Class, including but not limited to:

- a. Whether Defendant unlawfully failed to pay lawful overtime premiums for all hours worked over 40 in a workweek for those violations stated above;
- b. Whether those violations were pursuant to a common policy or practice applicable to all class members;
- c. Whether Defendant furnished class members with accurate wage statements on each payday containing the information required by NYLL § 195(3);
- d. Whether Defendant failed to pay members of the Proposed PTO Class benefits or wage supplements as required by NYLL § 198-c.
- e. Whether Defendant kept and maintained records with respect to each hour worked by Plaintiff and the Proposed Overtime Class;
- f. Whether those violations were pursuant to a common policy or practice applicable to all class members;
- g. Whether Defendant employed Plaintiffs and the Proposed Classes within the meaning of New York law;
- h. The proper measure of damages sustained by the Proposed Classes; and
- i. Whether Defendant's actions were "willful."

73. The case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual member's claim as a separate action would be

dispositive of the interest of other individuals not party to this action, impeding their ability to protect their interests.

74. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Proposed Classes predominate over any questions affecting only individual members of the Proposed Classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's common and uniform policies and practices denied the Proposed Classes the wages and wage supplements to which they are entitled. The damages suffered by the individual members of the Proposed Classes are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

75. Plaintiff intends to send notice to all members of the Proposed Classes to the extent required by Rule 23. The names and addresses of the Proposed Classes are available from Defendant.

76. During the class period, and upon information and belief, Plaintiff worked more than 1 hour of overtime-eligible work during the Class and Collective Class Periods for which he was not paid a lawful overtime premium of time and one half of his regular rate of pay.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Unlawful Failure to Pay Overtime Compensation under the Fair Labor Standards Act)**

77. Plaintiff alleges and incorporate by reference the allegations in the preceding paragraphs.

78. Plaintiff consents in writing to be a part of this action, pursuant to 20 U.S.C. § 216(b). Plaintiff's written consent form is attached hereto. Plaintiff anticipates that as this case proceeds, other individuals will sign consent forms and join as plaintiffs.

79. At all relevant times, Defendant has been an “employer” engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 20 U.S.C. § 203. At all relevant times, Defendant has employed and continue to employ employees, including Plaintiffs, and the Collective Class members. At all relevant times, upon information and belief, Defendant has gross operating revenues in excess of \$500,000.00.

80. The FLSA requires each covered employer to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per work week.

81. During their employment with Defendant, within the applicable statute of limitations, Plaintiff and the other Collective Class members worked in excess of forty hours per workweek without lawful overtime compensation.

82. Despite the hours worked by Plaintiff and the Collective Class members, Defendants willfully, in bad faith, and in knowing violation of the Federal Fair Labor Standards Act, failed and refused to pay them overtime compensation.

83. Plaintiffs were not paid FLSA mandated overtime premiums uniformly and based on the policies and practices articulated above.

84. Also, by failing to accurately record, report, and/or preserve records of hours worked by Plaintiff and the Collective Class, Defendant has failed to make, keep, and preserve records with respect to each of their employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of the FLSA, 20 U.S.C. § 201, *et seq.*

85. Defendant has failed to make a good faith effort to comply with the FLSA with respect to its compensation to Plaintiff and the Collective Class.



86. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C §§ 216(b) and 255(a).

87. Because Defendant's violations of the FLSA were willful, a 3-year statute of limitation applies, pursuant to 29 U.S.C. § 255.

88. Plaintiff, on behalf of himself and the Collective Class, seek recovery of their attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Failure to Pay Lawful Overtime Premiums in Violation of NYCRR § 142.2.2 and Article 19 of the NYLL)**

89. Plaintiff alleges and incorporate by reference the allegations in the preceding paragraphs.

90. At all relevant times, Plaintiff was an employee and the Defendant has been an employer within the meaning of the New York Labor Law.

91. The overtime wage provisions of Article 19 of the New York Labor Law and its supporting regulations apply to Defendant.

92. Defendant has failed to pay Plaintiffs and the Rule 23 Proposed Overtime Class the overtime wages to which they were entitled under the New York Labor Law.

93. By Defendant's failure to pay Plaintiff and the Rule 23 Proposed Overtime Class Members premium overtime wages for hours worked in excess of 40 hours per week, it has willfully violated the New York Labor Law Article 19, §§ 650 et seq., and the supporting New York State Department of Labor Regulations, including but not limited to the regulations in 12 N.Y.C.R.R. Part 142.

94. Due to Defendant's violations of the New York Labor Law, Plaintiff and the Rule 23 Proposed Overtime Class Members are entitled to recover from Defendant their unpaid

overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Failure to Pay Lawful Accrued, Unused Wage Supplements in Violation of NYLL § 198-c and Article 6)**

95. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

96. At all relevant times, Plaintiff and the Proposed PTO Class are former employees and the Defendant has been an employer within the meaning of the New York Labor Law.

97. The minimum specific wage supplement provisions of Article 6 of the New York Labor Law and its supporting regulations apply to Defendant.

98. Defendant has failed to pay Plaintiff and the Rule 23 Proposed PTO Class the wage supplements to which they were entitled under the New York Labor Law.

99. By Defendant's failure to pay Plaintiff and the Rule 23 Proposed PTO Class Members accrued and unused wage supplements, upon termination or separation, they have willfully violated the New York Labor Law Article 6, § 198-c, and the supporting New York State Department of Labor Regulations.

100. Due to Defendant's violations of the New York Labor Law, Plaintiff and the Rule 23 Putative PTO Class Members are entitled to recover from Defendants their unpaid accrued wage supplements, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Failure to Furnish Accurate Wage Statements in Violation of NYLL §195(3))**

101. Plaintiff alleges and incorporates by reference the allegations in the preceding paragraphs.

102. At all relevant times, Plaintiff was an employee and the Defendant has been an employer within the meaning of the New York Labor Law.

103. The recording keeping provisions of Article 19 of the New York Labor Law and its supporting regulations apply to Defendant.

104. Defendant did not provide Plaintiff and members of the Rule 23 Proposed Classes with a legally sufficient wage statement upon the payment of wages, as required by NYLL § 195(3).

105. NYLL §195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria required under the NYLL.

106. As a result of Defendant's unlawful conduct, Plaintiffs and members of the Classes are entitled to an award of damages pursuant to NYLL § 198, in an amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by NYLL § 663.

**PRAYER FOR RELIEF**

WHEREFORE, Lead Plaintiff, on behalf of himself and all members of the putative class and collective actions, prays for relief as follows:

- A. That the Court determine that this action may proceed as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure;
- B. That Defendant is found to have violated the provisions of the New York Labor Law as to Plaintiff and the Classes;
- C. That Defendant is found to have violated the Federal Fair Labor Standards Act as to Plaintiff and the Collective Class;
- D. That Defendant's violations as described above are found to be willful;

- E. An award to Plaintiffs and the Collective Class and Class Members for the amount of unpaid wages owed, including interest thereon, and penalties, including liquidated damages, subject to proof at trial;
- F. That Defendant further be enjoined to cease and desist from unlawful activities in violation of the FLSA and NYLL;
- G. That Plaintiff's counsel and Plaintiff Timothy Stewart can adequately represent the interests of the class as class counsel and class representative, respectively.
- H. An award of reasonable attorneys' fees and costs pursuant to the NYLL and 29 U.S.C. § 216 and/or other applicable law; and
- I. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury as to all issues so triable.

DATED: December 21, 2016

THE LAW OFFICE OF CHRISTOPHER Q.  
DAVIS, PLLC



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Christopher Q. Davis (CD-7282)  
The Law Office of Christopher Q. Davis, PLLC  
225 Broadway, Suite 1803  
New York, New York 10007  
646-430-7930

JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 TIMOTHY STEWART, individually and on behalf of all others similarly situated

**(b)** County of Residence of First Listed Plaintiff Franklin County  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 THE LAW OFFICE OF CHRISTOPHER Q. DAVIS, PLLC  
 225 Broadway, Suite 1803, New York, New York 10007  
 646-430-7930

**DEFENDANTS**  
 CITIZEN ADVOCATES, INC. doing business as NORTH STAR FAMILY OF SERVICES

County of Residence of First Listed Defendant Franklin County  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

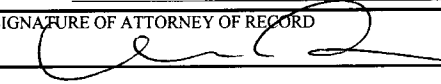
**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. § 207 et seq

Brief description of cause:  
Unpaid wages

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 12/21/16 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY  
 RECEIPT # 0206-3881493 AMOUNT \$400.00 APPLYING IFF \_\_\_\_\_ JUDGE DNH MAG. JUDGE DJS

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Against Citizen Advocates Over Off-The-Clock Work](#)

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